

INDUSTRIAL MEDICAL COUNCIL
DEPARTMENT OF INDUSTRIAL RELATIONS

NOTICE OF PROPOSED ACTION TO ADOPT AND AMEND
CALIFORNIA CODE OF REGULATIONS, TITLE 8, CHAPTER 1
SECTIONS 18 and 66

Prepared by:

Richard Starkeson, Counsel
Industrial Medical Council
P.O.B. 8888
San Francisco, CA 94128
(650) 737-2700

TITLE 8. Industrial Medical Council

NOTICE OF PROPOSED RULEMAKING

The Industrial Medical Council ("IMC") proposes to amend regulations governing the Qualified Medical Evaluator program. The existing regulations are found in Chapter 1, commencing with Section 1, of Title 8 of the California Code of Regulations. The proposed amendments will make the Qualified Medical Evaluator program operate more effectively. The IMC proposes to adopt these amendments and these new regulations after considering all comments, objections, or recommendations regarding the proposed action.

WRITTEN COMMENT PERIOD, AGENCY CONTACTS

Written Comment Period:

Any person or authorized representative may submit written comments relevant to the proposed regulatory action to the IMC at the addresses listed below. The written comment period closes on November 17, 2003, at 5:00 p.m., and the IMC will consider only those comments which are received by that deadline. Written comments may be submitted by letter, facsimile, or e-mail by as follows (Comments by email are preferred, and will save the agency personnel time and taxpayer dollars in responding to them):

Industrial Medical Council, Regulations
P.O.B. 8888
San Francisco, CA 94128
Facsimile: (650) 737-2637
E-mail: imcrules@hq.dir.ca.gov

Written comments may also be submitted in person at the offices of the IMC at the following street address:

Industrial Medical Council
395 Oyster Point Blvd, Suite 102
South San Francisco, California

All written comments will be given consideration by the IMC, regardless of which mode of delivery is chosen.

Agency Contacts:

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, for the Initial

Statement of Reasons, and for any supplemental information contained in the rulemaking file may be directed to the contact person. The contact person is:

Annadessa Gregorio
Industrial Medical Council
P.O. B. 8888
San Francisco, CA 94128-8888
(650) 737-2700

BACK-UP CONTACT PERSON / CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

To obtain responses to questions regarding the substance of the proposed regulations, or in the event the contact person is unavailable, inquiries should be directed to:

Richard Starkeson
Industrial Medical Council
P.O. B. 8888
San Francisco, CA 94128-8888
(650) 737-2700

The IMC will hold a public hearing on the regulations if, no later than 15 days before the end of the written comment period, it receives a written request for a public hearing from any interested person or his or her authorized representative.

AUTHORITY AND REFERENCE

AUTHORITY: Labor Code sections 59, 139, 139.2

REFERENCE: Labor Code Sections 139, 139.2

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Overview:

The IMC is charged under Labor Code section 139 et seq., with administering the Qualified Medical Evaluator program in workers compensation. Qualified Medical Evaluators (QME's) examine employees for workers compensation injury claims, and make evaluations of disability upon which Workers Compensation Appeals Board decisions may be based. In most cases, for unrepresented employees, the reports of a QME and of treating physicians are the only medical evaluations used in determining disability.

The Qualified Medical Evaluator regulations had not been amended since 1999. It had since come to the attention of the IMC that there are problems with some regulations, some appear to be ambiguous, and some new regulations are necessary to effectively carry out the Qualified Medical Evaluator program mandated by Labor Code section 139. A group of proposed regulations is now pending adoption. Under this Notice, the Industrial Medical Council is proposing two additional regulatory changes.

INFORMATIVE DIGEST

The IMC proposes to amend a regulation Section 18 found in Chapter 1, section 18, Title 8 of the California Code of Regulations and adopt a new regulations, section 66.

The IMC did not consider any alternatives to any of the proposed changes to the existing regulations. Amendments are necessary to the regulations to remove some ambiguities and eliminate problems in Qualified Medical Evaluator program administration.

The IMC proposes to amend section 18 and to adopt section 66.

Section 18.

This section provides for the time at which fees are to be paid by QME's. In the regulations currently proposed under another Notice, the section was rewritten for clarity, deleting unnecessary language. A requirement that QME's whose status had lapsed for more than two years would have to meet current requirements for eligibility and retake the report writing class was added in paragraph (c).

This Notice covers only an additional proposed change, which is the addition of new paragraph (d). The problem addressed is how to treat Qualified Medical Evaluators (QME's) who have let their QME status lapse by either not paying their annual fee or by not applying for reappointment by their anniversary date.

Labor Code 139.2 (d) spells out the criteria for being reappointed as a QME. In relevant part, section (3) states that the QME must have completed 12 hours of Continuing Education (CE) within the previous 24 months. Title 8, Chapter 1, Section 55 discusses the issue of CE, how many hours are required and within what time frame. There it is stated that the 12 units must be within 24 months of the QME's term of appointment. This means that the QME requesting reappointment must have completed the 12 hours of CE by the time his or her appointment period has ended.

The new subdivision (d) provides that for a QME who has had a lapse in the appointment period, but who comes back within two years per paragraph (b), when submitting the reappointment application the QME must: (a) either have 12 hours of appropriate CE within 24 months of the previous appointment period or show 12 hours of recent CE; (b) have an additional 12 hours of CE by the end of the current appointment period; and (c) pay the fee within two years of the previous appointment period. The proposed paragraph (d) establishes this. Appointment periods would never be reset under this policy.

Section 66.

This new section provides for a definition of "a crime of moral turpitude" for purposes of Labor Code section 139.2. Labor Code section 139.2 (m) provides that the IMC shall terminate the QME status any physician whose license to practice has been terminated, who has been convicted of a misdemeanor or felony related to the conduct of medical practice, or who has been convicted "of a crime of moral turpitude." As termination is the most severe sanction the IMC can impose, it should always be based on clearly defined transgressions. The words "moral turpitude have" have different meanings dependent upon the context. In the legal sense, a crime may be seen to be a crime of moral turpitude for some legal purposes but not others. The IMC found that it was important to define precisely what was a "crime of moral turpitude" for purposes of termination under Labor Code section 139.2. Traditionally, crimes of moral turpitude have been crimes of dishonesty and crimes which involve readiness to do evil, and not crimes of battery. The new Section 66 adopts a definition of "crime of moral turpitude" for purposes of termination pursuant to Labor Code section 139.2, subdivision (m).

Comparable Statutes and Regulations:

There are no comparable federal statutes or regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The IMC has made the following initial determinations with respect to these proposals. These proposals impose no significant mandates, costs, or savings that are different or distinct from what the Legislature has required by statute.

Mandates on Local Agencies or School Districts:

The proposals do not impose mandates on local agencies or school districts distinct from those imposed by statute. The IMC has determined that the proposed regulations will not impose any new mandated program on local agencies or school districts.

Costs or Savings to State Agencies; Reimbursable Costs Imposed on Local Agencies or School Districts; other nondiscretionary costs or savings imposed on local agencies; and costs or savings in federal funding to the state:

The proposals do not impose any reimbursable costs on local agencies or school districts.

The proposals do not involve any costs or savings for local agencies.

The proposals do not involve any costs or savings in federal funding to the state.

Initial Determination of Economic Impact on Business:

The IMC has made an initial determination that these proposals will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The Qualified Medical Evaluator statutes and regulations are neutral in their treatment of California businesses as compared to businesses from other states. Qualified Medical Evaluators are not businesses, but individuals subject to regulation, and none of the proposed changes will affect Qualified Medical Evaluators substantially differently than existing regulations.

Known Cost Impacts on Representative Private Person or Business:

These proposals are directed primarily at Qualified Medical Evaluators. The IMC is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with these proposed regulations.

Creation, Elimination, or Expansion of Jobs or Businesses (Results of Assessment under Government Code section 11346.3(b)):

The IMC has made initial determinations that (1) these proposals will not affect the creation or elimination of jobs within the State of California; (2) these proposals will not affect the creation of new businesses or the elimination of existing businesses within the State of California; and (3) these proposals will not affect the expansion of businesses currently doing business within the State of California.

Reporting Requirements (Finding under Government Code section 11346.3(c)):

These proposals impose no reporting requirements on businesses.

Effect on Housing Costs:

These proposals have no effect on housing costs.

Effect on Small Business:

The IMC has made an initial determination that these proposals will not affect small business. The reason for this determination is that the proposals consist of a series of amendments designed to improve and make more clear regulations of the Qualified Medical Evaluator program, and the proposals will have no effect on small business distinct from the statutes and existing regulations. The proposals and the regulations they would amend are directed at Qualified Medical Evaluators. None of the proposals are regulations that small businesses legally would be required to comply with or that small businesses legally would be required to enforce. Small business will derive no new or distinct benefit nor will they incur any new or distinct detriment from the enforcement of these proposals.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the IMC must determine that no reasonable alternative considered by the IMC or that otherwise has been identified and brought to the IMC's attention would either be more effective in carrying out the purpose for which the action is proposed or be as effective as the proposed action and less burdensome to affected private persons. These proposals consist of an amendment to an existing regulation governing Qualified Medical Evaluator Program, and the adoption of a new regulation. The amendment of the existing regulation and the adoption of the new regulation appears to be the most feasible solution to eliminate the problems seen in the Qualified Medical Evaluator program.

The IMC invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

A pre-notice workshop, pursuant to Government Code Section 11346.45, is not required to implement the proposed regulations, because the issues addressed are not so complex that they cannot easily be reviewed during the comment period.

However, text of the draft proposed regulations has been the subject of discussion at noticed meetings of the Education Committee and the Quality Assurance Committee of the IMC, where public comment was invited, before the IMC proposed the adoption of the regulations.

AVAILABILITY OF INFORMATION PERTAINING TO THE PROPOSED ACTION

The IMC will have the rulemaking file available for inspection and copying throughout the rulemaking process. As of the date of this Notice the file consists of this notice, the initial statement of reasons, and the text of the proposed regulations. The entire rulemaking file may be inspected during the hours of 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding public holidays, at:

Industrial Medical Council
395 Oyster Point Blvd, Suite 102
South San Francisco, California

Copies may be ordered by contacting the agency contact person listed above.

Website:

Rulemaking records, including the text of the proposed regulations may be accessed through the Department of Industrial Relations' Internet website at www.dir.ca.gov. To access them, click on the "Proposed Regulations - Rulemaking" link and scroll down the list of rulemaking proceedings to find the current Qualified Medical Evaluator rulemaking link.

Availability of Changed or Modified Text:

After considering all timely and relevant comments received, the IMC may adopt the proposed regulations substantially as described in this notice. If the IMC makes modifications which are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be made available to the public for at least 15 days before the IMC adopts the regulations as revised. Any such modifications will also be posted on the Department's website at www.dir.ca.gov. To access it click on the "Proposed Regulations - Rulemaking" link and scroll down the list of rulemaking proceedings to find the current Qualified Medical Evaluator rulemaking link. Please send requests for copies of any modified regulations to the attention of the contact person listed above. The IMC will accept written comments on the modified regulations for 15 days after the date on which they are made available.

Availability of the Final Statement of Reasons and the Rulemaking File:

Upon completion, the Final Statement of Reasons will be available and the entire rulemaking file may be obtained from the contact person named in this notice, or may be accessed on the Department of Industrial Relations' website at www.dir.ca.gov. To access it click on the "Proposed Regulations - Rulemaking" link and scroll down the list of rulemaking proceedings to find the current Qualified Medical Evaluator rulemaking link, and the link to Final Statement of Reasons within it.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, will automatically be sent to those interested persons on the IMC's mailing list.

If adopted, the proposed regulations as amended will appear in Title 8, California Code of Regulations, Chapter 1.